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SOCIAL SECURITY HEARINGS AND APPEALS

NOVEMBER 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 10727]

The Committee on Ways and eMans, to whom was referred the bill (H.R. 10727) to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVIII by establishing uniform review procedures under such titles, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SCOPE

The purpose of H.R. 10727 is to expedite the holding of hearings for social security claimants whose applications for benefits have been denied. This is an emergency bill designed to take the most effective action that can be taken immediately to help reduce the enormous backlog of social security appeals cases new pending within the Social Security Administration. At the present time, there are approximately 105,000 cases before the Bureau of Hearings and Appeals of the Social Security Administration, including social security disability and retirement cases, Supplemental Security Income (SSI) cases, Medicare cases, and black lung cases.

The appeals procedures under the SSI program (title XVI of the Act) differ from those that apply to hearings conducted under the Old-Age, Survivors and Disability Insurance program (title II) and the Medicare program (title XVIII). In addition, SSI appeals are heard by social security hearing examiners whose appointment is provided for in title XVI of the Act, while social security and medicare appeals are heard by Administrative Law Judges appointed under the Administrative Procedure Act.

H.R. 10727 would eliminate the distinctions between hearings under title XVI and those that are conducted under title II and title XVIII of the Act. The bill also provides for the more effective use of hearing officers within the Social Security Administration by giving the

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authority to persons who have been appointed as SSI hearing examiners to hear cases under title II and title XVIII for a temporary period of time terminating December 31, 1978. They will, unlike current SSI hearing examiners, operate under the provisions of the Administrative Procedure Act which are designed to assure independence of hearings officers from agency control.

General Discussion

Need for Legislation

There is currently a tremendous backlog of hearings cases before the Bureau of Hearings and Appeals and every Member of Congress has heard from constituents concerning cases where claimants have had to wait many months and even years for a hearing and decision in their case. Within recent months the Bureau of Hearings and Appeals has made significant gains in increasing the productivity of Administrative Law Judges (ALJs) with the result that the current case backlog is being reduced by 1,000 cases a month. If the authority in this bill is enacted it has been estimated that the hearing backlog will be reduced by 3,000 a month so that in 18 months cases can be adjudicated within 90 days.

At the request of 73 Members of Congress, the Subcommittee on Social Security held extensive hearings on this subject in September and October and heard from 43 witnesses including some of the foremost experts in administrative law and social security. The Subcommittee also heard from the various associations of hearing examiners and Administrative Law Judges. Many suggestions were made for changes in the hearings procedures and the administration of the disability programs ranging from minor amendments to massive structural changes.

In this regard, the Committee recommends that the Social Security Administration authorize the Center for Administrative Justice to make a study of the Social Security appeals procedures and make recommendations for any structural changes relating to improving both the speed and quality of Social Security adjudications. Although most witnesses appearing before the Subcommittee agreed that the current appeals system under the Administrative Procedure Act is in the public interest, some witnesses, including the Civil Service Commission, expressed a contrary view. Thus, the recommended study should address this broad issue together with such subjects as the appropriate qualifications, method of appointment, and position and grade classification of Social Security ALJs.

Although it intends to consider the appeals process in depth when it takes up comprehensive Social Security legislation next session, the Committee now recommends a relatively limited bill which could be enacted into law this year. Additional amendments might have the effect of complicating and making the bill more subject to controversy.

Provisions of the Bill

The bill eliminates the distinction in the nature of hearings and hearing officers under the Social Security and SSI programs, thus resulting in a common corps of hearing officers authorized to conduct hearings under both programs with common procedural safeguards

provided under the Social Security Act and the Administrative Procedure Act.

The first provision of the bill would amend Section 1631(c) of the Social Security Act to provide the same rights to hearing and administrative and judicial review with respect to claims under title XVI (SSI) of the Act as to apply to title II (Social Security) and title XVIII (Medicare) claims under Section 205(b) and 205(g) of the Act. This is necessary to override an interpretation of the Civil Service Commission that the Administrative Procedure Act was not applicable to SSI hearings and which required the appointment of non-APA hearings officers who could not hear Social Security and Medicare cases. This action greatly exacerbated the current hearing crisis and the validity of the SSI hearings has been challenged in the Courts as second class justice. The Committee bill will put this matter to rest by clearly providing on-the-record administrative hearings and judicial review of a parallel nature for Social Security, SSI and Medicare claimants.

The principal modifications to Section 1631(c), which presently provides general authority to the Secretary to conduct hearings on SSI appeals, would be:

(1) the specfic requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;

(2) an increase in the period during which requests for review must be filed from 30 days to 60 days;

(3) the addition of specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and authority to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure;

(4) to make the final determinations of the Secretary subject to the "substantial evidence rule" upon judicial review by eliminating language presently in Section 1631(c)(3) whch provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court".

The principal effect of this last modification is to apply the same rules of judicial review of title XVI cases as apply to title II cases. By removing this language from title XVI, findings of fact of the Secretary in SSI cases, if supported by substantial evidence, shall be conclusive as are such findings under title II. Your Committee believes that both programs should be under the "substantial evidence rule", but that this should not be interpreted by the courts as a license to vary from strict adherence to its principles. With over 4,000 social security disability cases now pending in the United States District Courts, and the possibility of a similar caseload developing in the SSI program, when its appeals are fully felt, the practice of certain courts to make *de novo* factual determinations would result in very serious problems for the federal judiciary and the social security program.

Your Committee bill would repeal section 1631(d)(2) of the Social Security Act. This is the section of the law under which, pursuant to Civil Service Commission interpretation, non-APA hearing examiners have been appointed. The continuation of this authority is inappropriate inasmuch as title XVI cases in the future will require APA hear-

ing officers. The Committee believes that an adequate supply of APA hearing officers can be obtained from the current pool of SSI hearing examiners and Black Lung ALJs who meet or will meet the requirements for regular appointments and through the on-going recruitment by the Civil Service Commission of ALJs in the private and governmental sectors.

The Committee bill also grants authority for those SSI hearing examiners (who have been appointed under section 1631(d)(2)) to hear cases under titles II, XVI, and XVIII until December 31, 1978 as temporary Administrative Law Judges if the Secretary of HEW finds it will promote the achievement of the objectives of these titles. It is the Committee's understanding that the Secretary will make this finding as to all SSI hearing examiners who have been appointed. The Committee also understands that now virtually all the temporary Black Lung judges hold SSI hearing examiner appointments and this would provide the Bureau of Hearings and Appeals the 200 judges it needs to reduce the backlog. Furthermore, by the end of 1978, all SSI examiners will have acquired sufficient adjudication experience to meet the experience requirement for appointment as regular ALJs. They would, as they met the experience requirement, be afforded the opportunity to be placed on the register for regular ALJ appointment on a merit basis under the regular Civil Service procedures.

It is hoped that these requirements and procedures will be applied in a manner to effectively serve the needs of the Social Security Act programs. The Committee is not convinced that these needs have been adequately served in the past by the Office of Administrative Law Judges, Civil Service Commission. The performance of this office in overruling the administering agency (HEW) in its legal opinion that SSI was under the APA and in downgrading title II social security adjudications as bearing "little resemblance to the full-blown adversarial proceedings conducted by Administrative Law Judges, under the Administrative Procedure Act, in regulatory agencies" does not reflect the will of Congress.

The Office of Administrative Law Judges should be mindful of its ministerial responsibilities in supplying registers from which adequate numbers of ALJs can be hired by HEW to adjudicate social security claims. There are indications that in the past these registers have not been supplied with the speed and with the number of candidates thereon which HEW needed to get better control over the hearings backlog. In evaluating current SSI hearings examiners for regular ALJ appointments great weight should be given to experience in actually adjudicating Social Security and Black Lung cases and roadblocks should not be created in unduly lengthy and bureaucratic appointment procedures. Recent statistics show that of the 55 applications of SSI hearing examiners for the regular ALJ registers which have been acted upon by the Civil Service Commission, only 5 hearing examiners have been found eligible. This suggests to the Committee that the Office of Administrative Law Judges is applying its standards unrealistically. Now that a majority of the ALJ corps in the Federal Government are working under Social Security Act programs, the Civil Service Commission should reexamine its ALJ appointment standards to assure that they are relevant to the positions that have to be filled.

To avoid any possible misinterpretation, the bill specifically provides that the temporary hearing officers authorized to conduct hearings under the bill would be subject to all the provisions of the Administrative Procedure Act that assure independence from agency control. These provisions would include: Subchapter II of chapter 5 of title 5 of the United States Code (the substantive provisions relating to APA adjudications); the second sentence of section 3105, of title 5 U.S.C. (assignment of cases in rotation and the prohibition of assignment to duties inconsistent with their responsibilities as hearing officers); and the deeming of them as hearing examiners appointed under section 3105 so that, among other things, they would be exempt from agency performance rating requirements (5 U.S.C. 4301(2)(E)) and agency determination of performance acceptability for in-grade increases (5 U.S.C. 5335(a)(3)(B)) and making Civil Service responsible for determining their pay levels (5 U.S.C. 5362), removal for cause (5 U.S.C. 7521), and general administration (5 U.S.C. 1305). The Committee is unaware of any prejudicial "agency control" exercised by HEW under the parallel provisions it has established for SSI hearing examiners. However, the specific application of these provisions of the APA, together with the provisions of the bill applying the same procedural safeguards to review proceedings under title XVI as apply under title II, will eliminate the possibility of the courts determining that SSI review procedures do not comply with the Administrative Procedure Act or due process.

Moreover, the specific enumeration of these provisions of the APA as applicable to the temporary ALJs should not be interpreted to make these adversary proceedings or otherwise "judicialize" procedures under title II, XVI, and XVIII. The enumeration of these provisions also should in no way suggest that they are not applicable to the regular Social Security ALJs. Your Committee and the Department of HEW consistently over the years have declared that the language in title II (and under the provisions of this bill, title XVI) of the Social Security Act call for "on-the-record" hearings which invoke the provisions of the Administrative Procedure Act.

Although the bill is silent on the grade level of temporary ALJs, the Administration's proposal made at the hearing before the Subcommittee envisioned a GS–14 for such officers who would have been allowed to hear concurrent cases (applications for SSI and Social Security) in addition to those solely for SSI benefits. Your Committee's bill authorizes broader authority for these temporary ALJs so that the Bureau of Hearings and Appeals will have the maximum amount of flexibility in eliminating the appeals backlog. These temporary ALJs, therefore, would also be able to hear Social Security and Medicare cases. For these reasons and also because the Black Lung ALJs who will be included in the temporary corps have already been classified at the GS–14 level, the Committee believes that GS–14 would be an appropriate classification for those holding authority provided for by the bill. The fact that the Committee does not suggest or mandate by law a GS–15 for these individuals does not indicate that it believes that a lower grade is appropriate for regular Social Security ALJs. In fact, the Committee was not impressed with the rationale of the Civil Service Commission which emphasized the nonadversary aspect of the Social Security hearing in justifying the dif-

ferential in grade level between regulatory agency ALJs (GS–16) and the Social Security ALJs (GS–15).

The final provision in the bill will reduce the period for which Social Security and Medicare appeals may be taken at both the reconsideration and hearing level from six months to 60 days.

The Committee believes that a 6-month time period is unnecessarily long for a claimant to appeal a title II or title XVIII decision of his claim. In fact, because a mandatory reconsideration has been adopted administratively under this authority, a double period may result. An individual whose claim has been initially denied has a full six months to decide whether to request a reconsideration and then another 6 months to decide whether to appeal to an Administrative Law Judge.

More than 65 percent of the hearings requested are filed within 60 days after the claimants receive notification that their reconsideration had not resulted in the decision being overturned. If the time limit was reduced to 60 days, there may be a decrease in the number of hearing requests filed. Those individuals who have not filed for review within 60 days may file a new application for benefits on the basis of new evidence or changed condition which in most instances can be adjudicated more speedily at the initial determination level. Also, reducing the time limit would result in a reduction in administrative costs and, perhaps most importantly would be beneficial in that less case development would be needed at the hearing level. This situation has played a major role in delaying decisions in appealed cases. Often hearings filed in the 4th, 5th, or 6th months following the reconsideration determination are virtually new cases and call for extensive medical and vocational development which takes the ALJ away from his primary role of deciding cases. In order to assure that the rights of individuals are not adversely affected, your Committee has instructed the Social Security Administration to undertake an extensive public information program which will advise social security applicants of the shortened length of time for filing an appeal.

Extending the time limit for requesting SSI hearings would make the limit generally consistent with the time limit applicable to Social Security, Black Lung, and most Medicare claims and would be beneficial from a procedural and administrative standpoint particularly in concurrent benefit cases. The Social Security Administration informed the Committee that currently it is granting many waivers for late filing of SSI appeals, and extending the present 30 day period will give more reality to present procedures.

Other Matters Required To Be Discussed Under House Rules

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote by your committee on the motion to report the bill. The bill was ordered reported by a unanimous voice vote.

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the following statement is made relative to oversight findings by your committee. As a result of hearings conducted in September and October of this year by the Subcommittee on Social Security your committee concluded that it would be desirable to enact legislation to expedite the holding of hearings for social security claimants as is provided in H.R. 10727.

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives your committee states that this bill will involve no new budgetary authority or new or increased tax expenditures.

With respect to clause 2(1)(3)(C) and clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives your committee advises that no estimate or comparison has been submitted to your committee by the Director of the Congressional Budget Office relative to H.R. 10727, nor have any oversight findings or recommendations been submitted to your committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives your committee states that this bill would not have any inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7 of rule XIII of the Rules of the House of Representatives, the following statement is made relative to the cost of the bill: Your Committee estimates that there will be no additional program costs and possibly a slight savings in administrative costs this fiscal year and each of the following five fiscal years, as a result of the enactment of this legislation. The Department of HEW agrees with the Committee's estimate.

Section-by-Section Analysis of H.R. 10727

Section 1 of the bill would revise Section 1631(c) of the Social Security Act to provide to an applicant for benefits under title XVI of that Act the same rights to administrative and judicial review that Section 205(b) of that Act provides with respect to claims for benefits under titles II and XVIII of the Social Security Act.

The principal modifications to Section 1631(c)—which provides general authority to the Secretary of Health, Education, and Welfare to conduct hearings—would be:

(1) to include a specific requirement that decisions after a hearing must be on the basis of evidence adduced at the hearing;

(2) to make the final determination of the Secretary subject to the substantial evidence rule upon judicial review; the provision in current law (Sec. 1631(c)(3)) which provides that the determinations of the Secretary "as to any fact shall be final and conclusive and not subject to review by any court" would be repealed;

(3) to increase the period during which requests for review may be filed from 30 days to 60 days;

(4) to provide specific authority for the Secretary to hold hearings and make findings of fact, administer oaths, examine witnesses and receive evidence; and

(5) to authorize the Secretary to receive evidence at a hearing even though inadmissible under the rules of evidence applicable to court procedure.

Section 2 would repeal Section 1631(d)(2), thus terminating the authority of the Secretary of Health, Education, and Welfare to appoint individuals as hearing examiners to conduct hearings under title XVI.

Section 3 would authorize individuals who were appointed under Section 1631(d)(2) of the Social Security Act prior to enactment of the bill to conduct hearings under titles II (Social Security), XVI (SSI) and XVIII (Medicare) of the Social Security Act when the Secretary of Health, Education, and Welfare finds that it will promote the achievement of the objectives of those titles and notwithstanding the fact that these individuals were not appointed as Administrative Law Judges under the Administrative Procedure Act (5 U.S.C. section 3105). The appointments made prior to enactment under Section 1631(d)(2) may be continued until December 31, 1978. Until such date these individuals shall be deemed hearing examiners (ALJs) appointed under such section 3105 of title V and subject to subchapter II of Chapter 5 of such title, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.

Section 4 would amend Section 205(b) of the Social Security Act to specify that a request for a hearing under title II may not be filed later than sixty days after an individual receives notice of an adverse decision with respect to his rights to benefits. Under existing law, such requests may be filed within such time period as the Secretary specifies by regulation but the period cannot be less than six months after notice is mailed.

Section 5 would provide that the provisions of the bill take effect on enactment, except that the provisions which would reduce the period in which a request for a hearing may be filed would be effective only with respect to an adverse decision notice of which is received on or after the date of enactment.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

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TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

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EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT

SEC. 205. (a) * * *

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(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the

Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such decision must be filed within [such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed may not be less than six months after notice of such decision is mailed to] *sixty days after notice of such decision is received by* the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissable under rules of evidence applicable to court procedure.

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TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

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Part B—Procedural and General Provisions Payments and Procedures

PAYMENT OF BENEFITS

Sec. 1631. (a) (1) * * *

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Hearings and Review

(c) (1) *The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title.* The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within [thirty] *sixty* days after notice of such determination is received, *and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.*

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves [the existence of] a disability

(within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205[; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court].

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), (e), and (f) of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

[(2) To the extent the Secretary finds it will promote the achievement of the objectives of this title, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of title 5, United States Code.]

[(3)](*2*) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

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